***THE HONOURABLE SRI JUSTICE P.S.NARAYANA**

+WRIT PETITIONS No. 14740 OF 2006

% DATED: 12.12.2007

P.Somaraju,
S/o Gangaraju,
R/o Surapuvarigudem village,
Buttaigudem mandal,
West Godavari District & another.

..... PETITIONERS

AND

The Tobacco Board,
Government of India,
Rep., by its Secretary,
Guntur & 2 others.

.....RESPONDENTS

! COUNSEL FOR THE PETITIONERS: SRI M.V.DURGA PRASAD

^ COUNSEL FOR THE RESPONDENTS: SRI S.SRINIVASAREDDY

< Gist:

>Head Note

? Cases referred

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No :14740 of 2006

DATED: 12-12-2007

BETWEEN:

P.Somaraju & another.

..... PETITIONERS

AND

The Tobacco Board,
Government of India,
Rep., by its Secretary,
Guntur & 2 others.

.....RESPONDENTS

-
-
-
-
-

ORDER:

This Court issued Rule Nisi on 10-07-2006.

2. Petitioners filed the present Writ Petition for a writ of mandamus declaring the action of the respondents in limiting the quantity of Tobacco to be harvested and supplied by the petitioners as registered growers only to 2200 kgs, and collecting service charges above 2%, as illegal, and arbitrary.

3. W.P.M.P.No.28522 of 2007 was filed wherein the following relief was prayed for:

> "to issue writ, order or direction, more particularly one in the nature of writ of mandamus declaring the action of the respondents in collecting service charges of 15% and collecting extra fee of Rs.2/- per K.G. from the petitioner, as illegal and arbitrary and in violation of Section 14-A, 21 and 25 of the Tobacco Board Act and violative of Articles 14, 19(1)(g), 21 and 300-A of the Constitution of India and also principles of natural justice and further direct the respondents to refund the penalty collected in excess of 2% contrary to Section 14-A, ignoring the letter bearing No.11/6/2004-E.P. (Agri.VI_, dated 20-03-2006, as ultravires and pass such other order or orders as this Court may deem fit and proper in the circumstances of

the case".

4. A counter affidavit was filed in W.P.M.P.28522 of 2007 denying the averments made therein. The stay application was ordered by this Court on 25-10-2007. Counter affidavit was filed in W.P.No.14740 of 2006 by the Liason Officer of the 1st respondent.

5. Sri R.K.Chakravarthi, learned counsel representing Sri M.V.Durgaprasad, learned counsel representing the writ petitioners, had taken this Court through the affidavit filed in support of the Writ Petition, the counter affidavit, and also had drawn the attention of this Court to the relevant provisions of the Tobacco Board Act, 1975 (hereinafter referred to as 'Act' for the purpose of convenience) and would maintain that in the facts and circumstances the action of the respondents cannot be sustained. Learned counsel also had taken this Court through the amended prayer and further had drawn the attention of this Court to Sections 14-A and 21 of the Act and would maintain that the alleged circular is not placed before this Court and there is no gazette notification whereunder any rules governed in the field, as such, had been issued.

6. Learned counsel, no doubt, would submit that the fact that the petitioners are unauthorized growers may not be in dispute but the penalty may be imposed and having received the penalty and having regularized the crop, the present action cannot be sustained.

7. Per contra, learned standing counsel representing the respondents had taken this Court through the contents of the counter affidavit and also placed before this Court No.11/6/2004-EP(Agri.VI), dated 20-03-2006, addressed by the Government of India, Ministry of Commerce & Industry Department of Commerce,

Udyog Bhavan, New Delhi to the Chairman, Tobacco Board, Guntur, and would submit that in the light of the same, it cannot be said that the action is unauthorized.

8. Learned counsel also had taken this Court through Sections 8, 10, 11 and 13 of the Act and further explained the policy and would maintain that the writ petitioners had grown excess crop and the same being unauthorized cannot be permitted.

9. Learned counsel had drawn the attention of this Court to Sections 20A and 21 of the Act as well apart from Section14-A of the Act and would maintain that these provisions would govern different situations. Learned counsel also had drawn the attention of this Court to Section 25 of the Act and in elaboration explained how in the facts and circumstances the relief prayed for in the Writ Petition cannot be granted.

10. 1st petitioner had sworn to the affidavit filed in support of the Writ Petition wherein it had been averred that the 1st petitioner used to grow Virginia Tobacco since 1982, vide registration bearing No.WG/18-182-011, dated 16-12-1983, issued by the 1st respondent and also constructed a 'barn' for the purpose of curing the same. The said barn fell down due to heavy rains in the year, 1990. Immediately, the 1st petitioner applied for a fresh permission for the construction of new barn and the said application was refused by the 1st respondent vide reference No.JR/3/(6)/91/Pdn., dated
21-10-1991, without assigning any reasons. Due to poor financial conditions, the petitioners did not approach the 1st respondent for a fresh permission till the year, 2004 with a view to grow Tobacco again. Further, it is stated that the petitioners approached the 1st

respondent and applied for regularization of the old registration bearing No.WG/18-182-011, dated 16-12-1983, and also for a fresh permission in the name of the petitioners and the said applications were refused by the 1st respondent vide reference No.1(12)/2004-05/P.D.N., dated 10-09-2004, and reference No.1(12)/2004-05/P.D.N., dated 31-01-2005, respectively without assigning any reasons. It is further submitted that the petitioners approached the 1st respondent herein again on 29-10-2004 for review of the earlier order, dated 10-09-2004, but invain. Their applications were again rejected by the 1st respondent vide reference No.1(12)/2004-05/Production 221, dated
18-05-2005, and reference No.1(12)/2004-05/Production 256, dated 18-05-2005 respectively.

11. It is stated that the petitioners started growing tobacco in the month of August, 2004, in the legitimate expectation of the permission as the petitioners complied all the requirements for grant of such permission. After the refusal of permission, petitioners approached the Field Officer for permission in respect of the Tobacco already grown. The 1st respondent Board inspected the barns of the petitioners on 31-01-2005 and issued notices to the petitioners vide reference bearing No.TB/JRG/18/Unauthorised Barn/2005-05/2093, dated 01-02-2005, and reference bearing No.TB/JRG/18/Unauthorised Barn/2004-05/2092, dated 01-02-2005, respectively calling upon the petitioners to explain the reasons. The petitioners herein gave a detailed reply to the respondents stating that the order of refusal was not issued by the 1st respondent in time and that they have already planted the crop in the month of August, 2004 in legitimate expectation and *bona fide* belief that the 1st respondent will accord necessary permissions as the petitioners are entitled under Rules.

12. In paragraph 5 of the affidavit filed in support of the Writ Petition it is averred that after considering the explanation given by the petitioner, 1st respondent collected registration fee and licence fee of Rs.4015/- each totaling an amount of Rs.8030/- vide receipts Nos.12430 and 12431, dated 31-10-2005, and after the collection of registration fee, granted registration to the petitioners as Tobacco growers and issued Tobacco Growers Pass Books on 07-11-2005 to them vide registration bearing Nos.18-181-140 and 18-181-141 respectively.

13. It is further stated that after issuance of registration by the 1st respondent Board, the 2nd respondent herein who is the Auction Superintendent gave only 2000 kg selling permission to the petitioners as against 4000 kg given to other Tobacco Growers. It is further submitted that once the plantation for the tobacco crop is done, the output i.e., the yield from the crop is not within the hands of petitioners as it is the result of the natural forces and other factors that influence the yield. Therefore, the action of the respondent in limiting the permitted tobacco quantity to 2000 kg is illegal and arbitrary. Whatever may be the yield in respect of the tobacco grown in the field of the petitioners as per the registration grant ought to be allowed, the action is also discriminatory and violative of Article 14 of the Constitution of India, as other registered growers who are similarly situated in all respects in the same village were given permission upto 4000 kg. Aggrieved by the same, the petitioners made repeated representations to the 2nd respondent and finally, the 2nd respondent increased the quantity by a small margin of 10% and gave permission for 2200 kg. Though he collected the registration fee on par with the other registered growers, who were similarly situated, but were granted permission upto 4000 kg, as stated above. Thus, the petitioners are discriminated against, without any

basis, muchless a clarification, having any nexus to the object. Hence, the impugned action is illegal and violative of Article 14 of the Constitution of India.

14. It is also averred that the petitioners supplied the bales for the auction conducted by the 2nd respondent from 14-02-2006 and the 2nd respondent received 9887 kgs of cured Virginia Tobacco from the petitioners for the purpose of sale, in the said auctions, without demur. However, to the utter surprise and shock of the petitioners, 3rd respondent-Assistant Manager (Accounts) issued sale notes by levying 1.1% as cess and 15% as service charge and further amount of Rs.2/- per kg as tax to the petitioners, without issuing any notice to the petitioners and without conducting any enquiry. Respondents have no such power to make any deductions or levy any amount except the service charges subject to the maximum rate of 2%. Thus, the action of the respondents is in total violation of Section 14-A of Tobacco Board Act, 1975 wherein it is clearly stipulated that no farmer can be levied with more than 2% service fee and there is no other provision under which the respondents can levy or impose any other charges or penalty in any other manner from the farmers. The action of the respondents is without any jurisdiction and is arbitrary and illegal. It violates the petitioners' fundamental right guaranteed under Articles 14, 19(1) (g), 21 and 300-A of the Constitution of India. Therefore, the petitioners are entitled to the refund of the amount illegally deducted from the sale proceeds of the tobacco supplied by them to the respondents.

15. The relief prayed for in this Writ Petition originally and subsequent thereto the amended prayer had also been specified supra.

16. In the counter affidavit filed by the Liaison Officer of the 1st respondent, several allegations had been denied. Specific stand had been taken that the Writ Petition is liable to be dismissed since the petitioners suppressed several facts.

17. It is stated that the petitioners did not produce any documentary evidence to show that the 1st petitioner was the registered grower since 1982 and that the application for construction of barn filed in 1990 was refused by the Board on 21-10-1991. The record relating to the said registration or refusal is not available with the Board and the deponent may have to establish the same. Further, it is stated that as per the decision of the Registration Committee for the crop season 2004-05 no new permissions were granted for the crop season 2004-05. When an application was made by the petitioners they were informed accordingly. Reasons for rejection were also mentioned and then petitioners were asked not to construct barns unauthorizedly. Against the said rejection, petitioners preferred revisions and the same were rejected.

18. It is also averred that *in spite* of rejecting the revisions the petitioners constructed two barns unauthorisedly and during the inspection conducted by the officials of the Board on 31-01-2005 the said unauthorized constructions were noticed and a mahazarnama was conducted. Thereafter the Auction Superintendent issued notice, dated 01-02-2006, as to why action should not be taken against them for violating Section 11B(ii) of the Act.

19. It is also stated that it is not true to allege that considering the explanation submitted by the petitioners, the Board collected licence fee and registration fee and granted registration. As per the Registration Policy for the crop season 2005-06 the Board had

taken a decision to regularize the unauthorized barns constructed in different regions and accord registration by charging Rs.4000/- towards penalty and Rs.15/- towards registration fee. Accordingly barns constructed by the petitioners were regularized and registration was granted. The petitioners were also issued Tobacco Board Growers Pass Book and were also permitted to raise tobacco crop in an extent of 0.98 hectares and upto 20.00 quintals of tobacco as production limit.

20. It is stated that depending upon the demand for Virginia Tobacco in the market, the Tobacco Board fixes the quantity that has to be produced. Accordingly, it grants registration to the growers to grow tobacco fixing the amount of tobacco each grower should grow. For the crop season 2005-06, keeping in view the crop size, the Tobacco Board granted registration only to those growers who had grown tobacco after obtaining registration from the Board for the previous year. As the petitioners were not registered growers for the previous year, they were not granted permission to grow tobacco for the crop season 2005-06. In view of the rejection of their applications, the petitioners ought not to have either constructed the barn or had grown tobacco. After the authorized crop was sold, taking a lenient view, the Registration Committee of the Tobacco Board permitted the petitioners to sell 2200 kgs each without penalty. The Board also allowed 10% excess over and above the quantity allotted towards nature's bounty. All the persons who have grown tobacco unauthorisedly were allowed only 2200 kgs with 10% margin towards nature's bounty. Therefore, the petitioners cannot complain that they have been discriminated. The persons who have obtained permission and have grown tobacco authorizedly were allowed 38.50 quintals per barn. Petitioners cannot compare themselves with the law abiding growers and contend that similar treatment must be meted

out to them. Having violated the provisions of the Tobacco Board Act and having grown tobacco unauthorisedly, it is not open to the petitioners to complain about the action of the Tobacco Board in allowing them to sell their tobacco, that too, when the Tobacco Board has permitted them taking a lenient view of the matter. Under the circumstances, it cannot be said that the action of the Tobacco Board is either illegal or violative of Article 14 of the Constitution of India.

21. Further, it is averred in paragraph 8 that the petitioners declared in Form-II produced before the Board that they have raised tobacco crop in an extent of
0.98 hectares each as per the permission granted by the Board. A copy of Form-II is filed herewith. As on today, the highest tobacco yield recorded in the area per hectare is
25 quintals, which by 10% of excess quantity produced was also allowed to be sold. According to the petitioners they have grown 9887 kgs of tobacco jointly, which clearly shows that they have violated the Tobacco Board Regulations and permission granted by the Board. As per the Ministry of Commerce, Government of India letter No.11/6/2004-EP (Agri.VI) dated 20-03-2006, a penalty of 15% over the value and an extra fee of Rs.2/- per kg was imposed on the excess tobacco produced over and above the quantity authorized by the Board. The said amounts were charged both from registered and unregistered growers who have grown tobacco in excess of the authorized quantity. Under the provisions of the Act, the Central Government can issue appropriate directions to achieve the objectives of the Act. Therefore, it is not open to the petitioners to complain about the alleged violation of the provisions of the Tobacco Board Act. Petitioners having violated the provisions of the Act, cannot now come before this Hon'ble Court exercising its extraordinary jurisdiction under Article

226 of the Constitution of India and complain that the action of the Board is violative of the Fundamental and Constitutional Rights guaranteed under the Constitution of India. Had the Government of India not issued the above said directions, the Board would not have permitted sale of the tobacco grown unauthorisedly and the petitioners would not have been in a position to sell the tobacco grown by them unauthorisedly elsewhere. Petitioners are therefore, not entitled for any relief in the Writ Petition, muchless, refund of the amount paid towards penalty.

22. The proceeding addressed by the Government of India, Ministry of Commerce & Industry Department of Commerce, Udyog Bhavan, New Delhi in No.11/6/2004-EP (Agri.VI) dated 20-03-2006, reads as hereunder:

> "I am directed to invite your attention to this Deptt's letters of even No. dated 29th June, 2005 and 8th November, 2005 regarding penalties for excess/unauthorized production of FCV tobacco and to say that the penalties imposed for excess/unauthorized production of Karnataka crop 2005-06 will hold good mutates-mutandis for the current crop in Andhra Pradesh.
>
> Accordingly, it is requested to re-confirm to the farmers that, as decided earlier, an extra fee of Rs.2 per kg and 15% of the proceeds of the sale will be imposed as service charges for marketing excess tobacco produced by the registered farmers and unauthorized tobacco produced by unregistered farmers for the A.P.Crop season 2005-06.
>
> It is requested that wide publicity to this decision may once again be given amongst farmers to ensure that they are aware of this decision well in advance".

23. Act 4/75 is an Act to provide for the development under the

control of the Unit of Tobacco Centre. Section 4 of the Act deals with establishment and constitution of the Board. Section 8 of the Act dealing with functions of the Board reads as follows:

"**Functions of the Board**—(1) It shall be the duty of the Board to promote, by such measures as it thinks fit, the development under the control of the Central Government of the tobacco industry.

(2) without prejudice to the generality of the provisions of sub-Section(1), the measures referred to therein may provide for--

[(a) regulating the production and curing of Virginia tobacco having regard to the following factors, namely :-

(i) the demand for Virginia tobacco in India and abroad;

(ii) the suitability of land for growing Virginia tobacco;

(iii) the differences in soil characteristics and agro-climatic factors in different regions of the country where Virginia tobacco is grown and the effect thereof on the quality and quantity of Virginia tobacco produced in those regions;

(iv) the marketability of different types of Virginia tobacco;

(v) the need for rotation of crops; and

(vi) the nature of the holdings of the growers of Virginia tobacco whether owned or leased;]

(b) keeping a constant watch on the Virginia tobacco market, both in India and abroad, and ensuring that the growers get a fair and remunerative price for the same and that there are no wide fluctuations in the prices of the commodity;

(c) maintenance and improvement of existing markets, and development of new markets outside India for Indian Virginia tobacco and its products and devising of marketing strategy in consonance with demand for the

commodity outside India, including group marketing under limited brand names;

(cc) establishment by the Board of auction platform with the previous approval of the Central Government, for the sale of Virginia tobacco by registered growers or curers, and functioning of the Board as an auctioneer as auction platforms established by or registered with it subject to such conditions as may be specified by the Central Government;]

(d) recommending to Central Government the minimum prices which may be fixed for purposes of export of Virginia tobacco with a view to avoiding unhealthy competition amongst the exporters;

(e) regulating in other respects Virginia tobacco marketing in India and export of Virginia tobacco having due regard to the interests of growers, manufacturers and dealers and the nation;

(f) propagating information useful to the growers, dealers and exports (including packers) of virginia tobacco and manufacturers of Virginia tobacco products and others concerned with Virginia tobacco and products thereof;

(g) purchasing virginia tobacco from growers when the same is considered necessary or expedient for protecting the interests of the growers and disposal of the same in India or abroad as and when considered appropriate;

(h) promoting the grading of tobacco at the level of growers;

(i) sponsoring, assisting, coordinating or encouraging scientific, technological and economic research for the promotion of tobacco industry;

(j) such other matters as may be prescribed.

(3) Without prejudice to the generality of the provisions of sub-Section(1) and subject to priority being given to

matters specified in sub-Section(2) the measures referred to in sub-section(1) may also provide in relation to tobacco, other than Virginia tobacco, for all or any of the matters specified in clauses (c) to (g) of sub-section(2) and for this purpose any reference in those clauses to Virginia tobacco shall be construed as including a reference to tobacco other than Virginia tobacco.

3) The Board shall perform its functions under this section in accordance with and subject to such rules as may be made by the Central Government and such rules may in par5ticular make provisions for ensuring that the Board functions in close liaison with Union agencies, institutions and authorities concerned with the tobacco industry (including growing of tobacco) and avoid duplication of effort.

24. Section 10 of the Act dealing with Registration of growers of Virginia tobacco reads as hereunder:

Registrationof growers of Virginia tobacco—(1) No person shall grow Virginia tobacco except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the rules made under this Act.

(2) In granting or refusing a certificate of registration, the Board shall have regard to the demand for Virginia tobacco in India and abroad, and the suitability of the land in relation to which the certificate is applied for and such other factors as may, having regard to the needs of the Virginia tobacco industry, be prescribed.

(3) A certificate of registration granted in pursuance of this section shall be valid for such period as may be prescribed.

(4) Every application for such certificate of registration shall be accompanied by such fees (not exceeding one rupee for 0.4 hectare of the land in relation to which such application has been made) as may be

prescribed.

25. Section 11A of the Act dealing with Registration of processors and manufacturers of Virginia tobacco, etc., specifies that no person shall process Virginia tobacco or manufacture products therefrom unless he registers himself as such processor or manufacturer, as the case may be, with the Board in accordance with the rules made under this Act.

Section 14A of the Act dealing with the power to levy fees reads as hereunder:

> (1) Where Virginia tobacco is sold at any auction platform established by the Board under this Act, it shall be competent for the Board or for any officer of the Board authorized by it in this behalf to levy fees, for the services rendered by the Board in relation to such sale, at such rate not exceeding two percent of the value of such tobacco as the Central Government may, from time to time, by notification in the Official Gazette, specify.
>
> (2) The fees levied under sub-section(1) shall be collected by the Board or such officer, equally from the seller of the Virginia tobacco and the purchaser of such tobacco in such manner as may be prescribed.]

26. Submissions in elaboration had been made in relevant interpretation and applicability of Section 14A of the Act aforesaid.

27. Section 20A of the Act dealing with power of Central Government to authorize purchase of Virginia tobacco reads as hereunder:

> Without prejudice to the provisions of clause (g) of sub-section(2) of Section 8 and notwithstanding anything contained in

any other provision of this Act, if the Central Government is satisfied that it is necessary or expedient so to do, it may, by order in writing and subject to such conditions and limitation as may be specified in the order, authorize any body or other agency to purchase virginia tobacco from the growers and dispose of the same in India or abroad.

28. Section 21 of the Act dealing with Directions by Central Government specifies that the Board shall carry out such directions as may be issued to it from time to time by the Central Government for the efficient administration of this Act.

29. Section 23 of the Act deals with penalties. Section 25 of the Act dealing with other penalties reads as hereunder:

Whoever contravenes or attempts to contravene or abets the contravention of the provisions of this Act (or of any rules or regulations made thereunder) other than the provisions, punishment for the contravention whereof has been provided for in section 20 or section 23 or section 24, shall be punishable with imprisonment for a term which may (extend to two years, or with fine which may extend to five thousand rupees, or with both) and in the case of a continuing contravention continues after conviction for the first such contravention.

30. Section 32 of the Act dealing with power of Central Government to make rules reads as hereunder:

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the powers and functions of the Vice-Chairman

of the Board;

(b) the term of office and other conditions of service of members, the manner of filling vacancies among and the procedure to be followed in the discharge of their functions by members;

(c) the powers which may be exercised and the duties which shall be performed by the Executive Director and the Secretary;

(d) the circumstances in which and the authority by which a member may be removed;

(e) the holding of a minimum number of meetings of the Board every year;

(f) the procedure to be followed at the meetings of the Board for the conduct of business and the number of members which shall form a quorum at a meeting;

(g) the maintenance by the Board of records of business transacted by the Board and the submission of copies thereof to the Central Government;

(ga) the specifications with regard to grading work referred to in section 11B;

(h) the matters referred to in section14;

(hh) the manner of collection of fees under sub-section (2) of section 14A;

(i) the powers of the Board, its Chairman, the Executive Director and committees of the Board with respect to the incurring of expenditure;

(j) the conditions subject to which the Board may incur expenditure outside India;

(ja) the amounts for the purposes of the proviso to section 18A;

(k) the preparation of budget estimates of receipts and expenditure of the Board and the authority by which the estimates are to be sanctioned;

(l) the form and manner in which the accounts should be maintained by the Board;

(m) the deposit of the funds of the Board in banks and the investment of such funds;

(n) the conditions to be observed by the Board

in borrowing money;

(o) the conditions subject to which and the manner in which contracts may be entered into by or on behalf of the Board;

(p) the additional matters in respect of which the Board may undertake measures in the discharge of its functions;

(q) the remuneration and other allowances payable to the person or persons referred to in clause (b) of sub-section(2) of section 9;

(r) the form and manner of, and the particulars to be contained in any returns or reports to be made to the Board under this Act;

(s) the collection of any information or statistics in respect of tobacco or tobacco products;

(t) any other matter which has to be , or may be, prescribed by, or provided for by rules under, this Act.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

31. The rejection letter for registration of licence issued by the Tobacco Board, Guntur, Ministry of Commerce, Government of India reads as hereunder:

"You have been informed vide our notice,

> dated 10-09-2004, about the Board decision of not to grant registration/renewal of registration as a grower/licence for operation of barn for the crop season 2004-2005. After re-examining your application, it is decided not to grant registration to you as a grower/licence for operation of barn construction of new barn during the year, 2004-2005 as you are not eligible for grant of registration as a grower barn operator as per the following reasons
>
> (1) your unauthorized construction of barn has been rejected by the Tobacco Board.

The letter, dated 10-02-2005, the pass book, Tobacco Board receipt, sale notes also had been placed before this Court.

32. The learned standing counsel representing the respondents would justify the action of the Tobacco Board in the light of the power to issue general directions. On a careful reading of the different provisions of the Act and also the scope and ambit thereof, this Court is of the considered opinion that it cannot be said that the impugned action is totally without authority or jurisdiction, but however, in the facts and circumstances, it may be proper to consider the case of the petitioners sympathetically taking into consideration the conditions of petitioners. In the light of the same, let the petitioners make a representation to the 1st respondent within a period of four weeks from the date of receipt of this order and let the 1st respondent consider the representation of the petitioners in appropriate perspective thereof in the light of the peculiar facts and take appropriate decision in this regard within a period of eight weeks thereafter and let the 1st respondent communicate the said decision to the petitioners in accordance with law.

33. Accordingly, with the above observations Writ Petition is

disposed of. No order as to costs.

_____

P.S.NARAYANA,J

12th December, 2007.

Note:

LR Copy to be marked.

B/o

Tsy